# Minnesota's Response to Brownfield Redevelopment Issues

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**This article highlights the key actions implemented by Minnesota to address issues related to brownfields and focuses on a number of key legislative and state agency actions that began in the 1980s. The article acknowledges that many of the brownfield actions taken by the Minnesota legislature and state government agencies would not have taken place—as they did or when they did—if it were not for the efforts and contributions made by dozens of individuals and other public, private and non-profit organizations. The article emphasizes that the actions taken by the Minnesota legislature and the brownfield programs in the state have been very successful at encouraging private and public parties to buy, invest, sell and redevelop brownfields. However, the article further states that there are still many brownfields in Minnesota that have not yet been addressed, and that challenges still exist. It is important to recognize past contributions and accomplishments, but even more important to support and strengthen existing programs that encourage new initiatives.**

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The purpose of this article is to highlight the key actions implemented by Minnesota to address brownfields by focusing on a number of legislative and state-agency actions pertaining to brownfields. This article touches on some of the initiatives and a program administered by the United States (US) Environmental Protection Agency (EPA), but, except for Hennepin and Ramsey counties, does not discuss the work done by local units of government. It is important to acknowledge that many of the brownfield actions by the Minnesota legislature and state government agencies would not have taken place—as they did or when they did—if it were not for the efforts and contributions by dozens of individuals and other public, private, and nonprofit organizations. Starting in the late 1980s and throughout the 1990s, these individuals and organizations played critical roles in helping to identify the issues. Many of these same individuals and organizations continue to be active participants in supporting and promoting the brownfield initiatives and programs today.

This article describes how the brownfield initiatives and programs evolved over time in response to the changing technical, legal, and economic issues facing state and local units of government, prospective purchasers and real estate developers, lenders, and, of course, property owners. In addition, this article also identifies a few of the critical reasons why it was important for Minnesota's legislature and environmental regulatory agencies to create policies and programs that would provide meaningful incentives encouraging public and private parties to investigate and clean up brownfield sites voluntarily and to allow the investigation and cleanup activities to be conducted in a manner and time frame that would be compatible with the typical real estate transaction and property redevelopment process.

The references listed at the end of the article include public records that are commonly available (legislative records or government publications). The information unavailable in the public record is based on the author's personal experience and recollections.

## Background

The full story of brownfields in Minnesota starts with events of more than 100 years ago. Minnesota is not typically known for massive industrial development; however,

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parts of the state have a long history of commercial and industrial activities and have had their fair share of manufacturing facilities, railroad maintenance yards, wood-treating operations, petroleum storage facilities, dry cleaners, gas stations, metal-recycling operations, and waste disposal facilities. These past industrial and commercial activities and waste disposal practices caused environmental contamination at hundreds of Minnesota properties.

The condensed version of the brownfield story would likely start in 1980—the year Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which is referred to as the federal Superfund law. Strict liability for cleanup costs related to the release of hazardous substances was imposed by CERCLA on, among other persons, the owner of the facility at which the release occurred. Although there are a few exceptions, by and large, any person who owns or has owned a property where contamination exists is defined as a responsible party under CERCLA.

In 1983, the Minnesota legislature followed suit and enacted the Minnesota version of Superfund, know as the Minnesota Environmental Response and Liability Act (MERLA). Like CERCLA, MERLA imposes strict liability for cleanup costs on responsible parties. However, the legislature decided that ownership by itself would not make a property owner a responsible party for a release under MERLA. Unlike CERCLA, MERLA entitled a property owner the benefit of an *innocent landowner* provision.

MERLA states that property owners are *not* responsible for a release or threatened release on the property unless the property owner

- was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such business at the facility;
- knowingly permitted a person to make regular use of the facility for disposal of waste;
- knowingly permitted a person to use the facility for disposal of a hazardous substance;
- knew or reasonably should have known that a hazardous substance was in or on the facility at the time they first acquired the property, and they *engaged in conduct associating that person with the release*; or
- took action that contributed significantly to the release after that person knew or reasonably should have known that a hazardous substance was located in or on the facility.

As the story continues, despite good intentions and successes, CERCLA and MERLA had an immediate, chilling effect on the real estate industry. The presence of contamination along with the potential regulatory and business risks associated with acquiring contaminated or potentially contaminated property has had a profound impact on how real estate transactions are conducted. The fear of Superfund liability helped to push redevelopment out of the urban core to previously undeveloped properties on the town outskirts. As a result, a growing number of commercial and industrial properties in the urban or developed parts of our communities remained underutilized or vacant. Lending institutions and prospective purchasers were reluctant and, in a number of cases, unwilling to finance or take title to contaminated or potentially contaminated property. Local units of government became increasingly concerned with the growing number of abandoned and underutilized properties in their communities, and property owners worried that the contamination or threat of contamination could reduce property values significantly.

A number of individuals and organizations in Minnesota were quick to recognize how environmental contamination was affecting the real estate market and were willing to work on solving the problems. As the following sections describe, a number of these individuals and organizations looked to the Minnesota legislature and a number of government agencies, in particular the Minnesota Pollution Control Agency (MPCA), for help.

## Beyond the Superfund: Early Minnesota Tools (1986–90)

### Superfund Amendment Reauthorization Act

In 1986, Congress passed the Superfund Amendment Reauthorization Act (SARA), which included a number of provisions, most notably the establishment of strict cleanup goals with a preference for permanent remedies. However, SARA also represented the first statutory effort to correct at least one of the unintended consequences of CERCLA by providing a defense against federal Superfund liability if a person could demonstrate that they are an "innocent landowner." To qualify for this defense, the person needed to demonstrate that they did not know or have reason to know

that the property was contaminated before they acquired it and the person had conducted "all appropriate inquiries" (AAI) before they acquired the property. SARA identified certain factors that would be considered, including any specialized knowledge or experience of the person buying the property, the relationship of the purchase price to the value of the property, and the obviousness of the contamination. SARA also established a system in which commercial transactions were to be held to a higher standard than transactions that involved private transactions, inheritances, or bequests. This statutory change was viewed at the time as a step in the right direction—but not nearly enough to provide the necessary level of comfort for many lenders.

## Tax-Increment Financing, the Petrofund, and a Stakeholder Group

Minnesota municipalities have a long history of providing financial assistance and incentives to encourage economic development intended to increase the tax base and generate jobs. One of the tools used by the municipalities includes tax-increment financing (TIF). TIF uses the increased property taxes that a new redevelopment generates to finance the cost of the redevelopment. TIF financing initially was the only significant financial incentive that a city could provide a prospective purchaser or developer. TIF has been in use in Minnesota since the 1950s. A few municipalities started to use TIF beginning in the early 1980s to help finance environmental cleanup activities. In 1987, the Minnesota legislature provided local units of government with the explicit authority to use TIF to investigate and clean up contaminated property.

In 1987, the Minnesota legislature also enacted the Minnesota Petroleum Tank Release Cleanup Act, which provides that a person is a responsible party for the releases of petroleum from a tank if that person owns or operates the tank during or after the releases. Unlike CERCLA and MERLA, the cleanup liability for leaking petroleum tanks applies to the owner of the tank instead of the owner of the property where the tank is located. The Petroleum Tank Release Cleanup Act includes an innocent owner exception for those who did not know or had reason to know of the tank's existence. The legislature also authorized the creation of the Petroleum Tank Fund (known as Petrofund), which provides up to 90% of the total reimbursement costs associated with the investigation and implementation of those corrective actions.

During this same period, a *stakeholder group* comprised of representatives from municipalities, banks, developers, attorneys, and property owners asked the MPCA to review and provide comments on environmental reports that had been readied in preparation for a real estate transaction or a redevelopment project. The MPCA's response was that the Minnesota legislature had granted the MPCA the authority and the resources to work only on priority sites on the Superfund list. The MPCA response was not what the stakeholder group was hoping for. The group contacted various legislators and, by the end of 1987, the Minnesota Office of the Attorney General (Minnesota AG's Office), with the support of the MPCA, had developed a proposal to create within the MPCA a new program that would provide information and assistance to property owners, lenders, municipalities, and prospective buyers.

## The Property Transfer Program

In 1988, the Minnesota legislature amended the state Superfund law and established the Property Transfer Technical Assistance Program (Property Transfer Program) within the MPCA to review and oversee voluntary investigations and response actions. The statutory amendment was one paragraph as follows:

> The Commissioner of the MPCA may, upon request, assist a person in determining whether real property has been the site of releases or threatened releases of a hazardous substance, pollutant or contaminant. The Commissioner of the MPCA may also assist in, or supervise, the development and implementation of reasonable and necessary response actions. Assistance may include review of agency records and files, and review and approval of a requester's investigative plans and reports and response action plans and implementation. The person requesting assistance under this subdivision shall pay the agency for the agency's costs of providing assistance as determined by the Commissioner. Money received by the agency for assistance under this section must be deposited in the Minnesota Environmental Response, Compensation and Compliance Fund.

The key function of the Property Transfer Program was to review technical reports and, based on that review, prepare comment or approval letters. The program was expected to review and provide a written response to the voluntary party within 30–45 days. In the early days of the Property Transfer Program, the approval letters were very straightforward. These letters were eventually referred to as Technical Assistance letters. The amendment also provided the MPCA authorization and seed money to hire two staff for the program.

The same legislative action also provided seed money to hire two staff for a Property Transfer File Evaluation Pro-

gram (File Evaluation Program). This program provided assistance to parties by providing MPCA file and database information intended to help determine whether a property (and properties within a one-mile radius) was the site of reported releases or threatened releases of hazardous substances, pollutants, or contaminants. The File Evaluation Program eventually stopped providing this assistance as private companies started to provide this type of service.

Implicit in the creation of the Property Transfer Program was that it would provide assistance for properties that were *not* a regulatory priority of the EPA or the MPCA. The program initially did not review investigation reports or cleanup plans for properties that were listed Superfund sites or even properties that were "Superfund-caliber sites," including sites listed on the EPA Comprehensive Environmental Response and Liability Information System (CERCLIS). The Property Transfer Program also did not provide assistance on properties being regulated by another MPCA program (e.g., the Resource Conservation and Recovery Act Program).

Also implicit in the creation of the Property Transfer Program was that voluntary parties seeking assistance from the MPCA had an option to participate—it was a voluntary program.

The Property Transfer Program opened its doors on August 15, 1988. During its first 30 months, over 150 applications were submitted by voluntary parties.

Within a short period, voluntary parties began to request that the language in the Technical Assistance letters be expanded to include an assurance that the MPCA (commissioner) would refrain from taking administrative or enforcement actions against the voluntary party. For example, the voluntary parties requested that the letter state that the MPCA would refrain from referring a release to the Superfund Program for inclusion on CERCLIS. By 1989, with the MPCA board-delegated approval, the Property Transfer Program started to issue the No Action letters regularly. In general, a No Action letter could be issued in the following situations:

- The contamination at the property was detected at concentrations that were determined by the Property Transfer Program staff to be insignificant and, as a result, no cleanup was required.
- The contamination at the property was remediated with the approval of the Property Transfer Program, and the staff determined that no additional cleanup was necessary.

Within a short period after the Property Transfer Program started to write No Action letters, voluntary parties started to express their concerns that the assurances included in those letters they were relying on could be changed at the discretion of the MPCA. The voluntary parties indicated that they would be more comfortable if the written assurances were codified in law.

## Agricultural Chemical Response and Reimbursement Account

In 1989, the Minnesota legislature established an Agricultural Chemical Response and Reimbursement Account (ACRRA) that is administered by an ACRRA Board and used to reimburse for costs to investigate and clean up agricultural chemical releases, including releases resulting from historical management of wastes (incurred after July 1, 1989).

## The Property Transfer Program Grows, the Minnesota Environmental Assessment Roundtable, and the Legislative Commission on Waste Management

In 1990, the Minnesota legislature provided seed money to hire two additional staff (technical analysts) for the Property Transfer Program. Voluntary parties again requested that the program amend the standard No Action language. At the request of a voluntary party, the Property Transfer Program, with advice from the AG's Office, created a new type of No Action letter to address a new situation: an investigation that showed that the groundwater contamination source on the property was a separate, upgradient property. The letter is now referred to an Off-site Source Determination letter. The Property Transfer Program also addressed another situation by issuing a liability protection letter that eventually came to be known as a No Association Determination. The Property Transfer Program also agreed, in certain situations, to enter into a No Action Agreement with voluntary parties instead of issuing a No Action letter.

Meanwhile, starting sometime in the late 1980s, a group of individuals involved in environmental and real estate issues in the Twin Cities began to meet semiregularly. The group would be known as Minnesota Environmental Assessment Roundtable (MEAR). Initially, the group "membership" was limited to representatives of the private sector (e.g., attorneys, consultants, lenders, real estate agents, developers, and property owners) and local units of govern-

ment. Some years later, MEAR also involved representatives from the various state government agencies.

The Minnesota legislature continued its momentum by passing legislation requiring the commissioners of the MPCA and the Minnesota Department of Agriculture (MDA) to prepare and submit a report to the Legislative Commission on Waste Management (LCWM) by January 1991 "to cover the effect of environmental contamination of real property on the purchase, sale, financing, and development of the property." The commissioners of the MPCA and the MDA were also required to provide the LCWM with a status report of the "programs and actions that provide advice or assistance to persons interested in the purchase, sale, financing, or development of such property." In preparing the report, the commissioners were directed to consult with the commissioner of the Minnesota Department of Revenue and "persons who are representatives of purchasers, sellers, financial institutions, and developers, including public development authorities, who have experience with transactions involving environmentally contaminated property."

Following this legislative action, representatives from the Minnesota AG's Office, the MPCA, and the LCWM held a series of meetings to identify how contaminated properties affect real estate and redevelopment transactions.

## Steps Toward Landmark Legislation and New Funding Programs (1991–95)

### Legislative Commission on Waste Management Report, Lender, and State Protections

As directed by the legislature, the MDA and MPCA commissioners prepared "A Report on the Effects of Environmental Contamination on Real Property" and submitted it in 1991 to the LCWM. This report would prove to be a major catalyst in legislative efforts. It directly resulted in the AG's Office, with the support of the MPCA, drafting legislation that would provide statutory authority for the MPCA to extend the current policies and provide liability protection to voluntary parties who clean up contaminated property.

In 1991, the Minnesota legislature amended MERLA to clarify how Superfund liability applies to lenders. The amendment stated that a lender who becomes a property owner is not a responsible party solely for the act of owning or having a financial interest in the property. In addition, the amendment stated that a lender is not defined as an operator (of the property, facility assets, or inventory) under MERLA solely because the lender has the capacity to influence the operation of the facility to protect the security interest in the property. Furthermore, the amendment stated that a person is not a responsible party under MERLA solely for terminating a contract for deed for a property where there is a release of hazardous substances. It also amended MERLA to state that Minnesota, agencies of the state, and local political subdivisions are not responsible parties solely as a result of exercising their powers of eminent domain or as a result of acquiring property through forfeiture.

### The Land Recycling Act, Petroleum Brownfields Program, and Agricultural Voluntary Investigation and Cleanup (AgVIC)

The Minnesota legislature codified the policies and practices of the MPCA Property Transfer Program and enacted the Land Recycling Act of 1992 (LRA). Through the passage of the LRA, *Minnesota became the first state to establish statutory authority for qualifying voluntary parties to obtain legal protections from state Superfund cleanup liability.*

The broad purpose of the LRA was to encourage voluntary actions to investigate and clean up property where there is a release or threatened release of hazardous substances and, in the process, encourage the reuse and redevelopment of otherwise underutilized property. The LRA helped to encourage these actions by providing the following:

- Legal liability protection to nonresponsible parties, including prospective purchasers, lenders, successors, and assigns, when a voluntary response action plan approved by the MPCA is completed.
- Codified a previous MPCA policy that provided a No Action determination (covenant not to sue) to parties, including property owners and prospective purchasers, when they demonstrate that the groundwater at the property is impacted by an off-site source.
- Codified a previous MPCA policy that provided that parties that investigate a property in accordance with an MPCA-approved plan would not associate themselves with the releases and thereby become a responsible party for those specific actions.

The LRA also provided authorization and seed money for the MPCA to hire seven additional staff to review and approve investigation and cleanup plans. Soon after the LRA became law, the Property Transfer Program was renamed the Voluntary Investigation and Cleanup (VIC) Program. The Minnesota legislature also granted the MPCA the authority and seed money to establish a Petroleum Voluntary Investigation and Cleanup Program, which is

now referred to as the Petroleum Brownfields Program. In addition, the Minnesota legislature granted MDA the authority (as part of the LRA) and the seed money to establish the Agricultural Chemical Voluntary Investigation and Cleanup (AgVIC) Program to provide technical assistance and liability protections to voluntary parties involved in property where there was a release or threatened release of agricultural chemicals.

The EPA's Superfund Revitalization Office, EPA Region 5, and the International City/County Management Association (ICMA) organized a regional conference in Chicago to seek input on how to improve the federal Superfund Program. The conference, held on November 13 and 14, 1992, and attended by citizens and representatives of industry, local government, state government, and environmental groups, focused on voluntary cleanups, accelerated cleanups, and public involvement in the cleanup process. One of the initiatives discussed at the conference was the voluntary cleanup process used by Minnesota's VIC Program. Another new federal initiative discussed at the conference was called the Superfund Accelerated Cleanup Model (SACM). The report summarizing the conference proceedings used the word "brownfields" to describe contaminated properties, one of the first such uses of the term.

## Establishment of DEED Cleanup Grants, the Contamination Tax, and Amendments to the LRA

In 1993, following its groundbreaking work on the LRA, the Minnesota legislature enacted legislation to authorize the Department of Employment and Economic Development (DEED), then known as the Minnesota Department of Trade and Economic Development, to establish a contamination cleanup program. The legislation did not appropriate funds for the program. The Contamination Cleanup Grant Program provided DEED with the authority to make grants that, "in the Commissioners judgment, provide the highest return in public benefits for the public benefits incurred." Six factors could be considered in making this determination:

- The recommendations or ranking of the projects by the MPCA
- The potential increase in the property tax base increase of the local taxing jurisdiction
- The social value to the community
- The probability that each site will be cleaned up without the use of the grant in the foreseeable future
- The amount of the cleanup cost
- The amount of commitment of local resources to pay for the cleanup

The Contaminated Cleanup Grant Program established two types of grants. One is the Contamination Investigation and Response Action Plan Development Grant, which helps to fund environmental assessment, investigation, and response action plan preparation activities. The second grant is the Contamination Cleanup Grant, which primarily helps fund the implementation of the approved response action plans. Cities, economic development authorities, housing and redevelopment authorities, port authorities, and counties are eligible to request Contamination Cleanup Grant funds. The grants are awarded twice a year, with the application deadlines being May 1st and November 1st. The grants were to be limited to up to 75% of the cleanup costs. The applicant must provide at least a 25% match.

The Minnesota legislature also created within the Department of Commerce a Contamination Tax Program that established a tax on the "contamination value" of property. The statute imposes a range of tax rates on the contamination value. It can reduce property tax on contaminated property to as low as 12.5% of the contamination value. To qualify for the tax reduction, the applicant (property owner) must have submitted and begun to implement a response action (cleanup) plan approved by the MPCA or the MDA. The proceeds from the property tax are to be made available for use by DEED as part of the Contamination Cleanup Grant Program.

Meanwhile, a 1993 amendment to the LRA allowed responsible parties to complete all necessary response actions (a full investigation and complete remedy), based on a voluntary response action plan approved by the MPCA VIC Program and receive a Certificate of Completion. The liability protections offered by this type of Certificate of Completion would not apply to the responsible party that had completed the response actions, but, instead, the liability protections would apply to prospective buyers, lenders, and their successors involved in the property where the response actions had been completed. As before, the responsible party that conducted the voluntary actions could request and receive a No Action letter from the MPCA VIC Program or enter in a No Action Agreement with the VIC Program. Amendments to the LRA also provided the MPCA with additional statutory authority and provided the seed money to hire four additional staff.

The LRA amendments codified the authority of the MPCA commissioner to issue No Association Determinations to nonresponsible parties for specific proposed actions with respect to identified releases or threatened releases at the property. The LRA amendments also allowed a voluntary

party to receive a "Retroactive" No Association Determination—providing liability protections to current property owners for past actions they had taken since owning the property.

Under the title of a SACM pilot project, EPA Region 5 awarded the MPCA VIC Program $255,000 to hire three staff that would be responsible for overseeing the investigations and cleanup of 30 CERCLIS sites—sites for which the Superfund scoring and funding process was still pending. The voluntary parties agreed to pay for MPCA VIC Program review and oversight costs. In this way, at the end of the project, the MPCA VIC Program was able to issue No Action letters to the voluntary parties, the EPA was able to remove the sites from the CERCLIS database, and the funding was able to be used as seed money for the three staff to continue to work on new MPCA VIC Program sites.

## Superfund Memorandum of Agreement and Ford Foundation Award

EPA Region 5 and the MPCA entered into a Superfund Memorandum of Agreement (SMOA) in December, 1994, establishing operating procedures for general Superfund coordination and communication between the MPCA and EPA Region 5. The SMOA also clarified that the MPCA is the designated lead agency for remedial activities at voluntary investigation and cleanup sites in Minnesota.

The MPCA VIC Program was the recipient of a Ford Foundation Innovations in State and Local Government Award, which is administered by the Ford Foundation and the Kennedy School of Government at Harvard University. The award brought with it a $100,000 grant. The Ford Foundation directed that $50,000 was to be used for education and outreach activities. The other $50,000 could be used at the discretion of the MPCA VIC Program. As discussed later in this article, the MPCA VIC Program staff decided to use the remaining $50,000 to help establish a grant program to be administered by a local nonprofit organization, the Minnesota Environmental Initiative (MEI).

## Brownfield Addendum to the SMOA, RBSE Manual, the Livable Communities Act, Dry Cleaner Fund, and More

In May 1995, the EPA signed a Brownfield Addendum to the SMOA to define further the roles and responsibilities of EPA Region 5 and the MPCA with respect to activities conducted under the authority of the VIC Program. As stated in the Brownfield Addendum to the SMOA, "when a site in Minnesota has been investigated or remediated in accordance with practices and procedures of the VIC Program and the MPCA has issued a "no action" determination or the MPCA has issued a "certificate of completion . . . or the MPCA has issued an off-site source determination, EPA Region 5 will not plan or anticipate any federal action with respect to the parties covered by the determinations or the certificate of completion." The Brownfield Addendum to the SMOA also states that EPA Region 5 will not take any federal action unless the site poses an imminent and substantial endangerment or emergency situation.

The MPCA VIC Program continued to update and develop programmatic and technical guidance documents. The MPCA VIC Program and the MPCA Superfund Program began to undertake also a more coordinated and comprehensive effort to develop technical guidance documents, including the development of numeric soil-cleanup criteria that could be applied to all contaminated sites. This process eventually led to the development of a Risk-Based Site Evaluation (RBSE) Manual.

Using the authority previously provided by the Minnesota legislature in 1993, DEED awarded its first Contamination Cleanup Grants.

Livable Communities Act established by the Minnesota legislature and administered by Metropolitan Council adopted three financial incentives programs. One of those programs provides grants and is known as the Tax Base Revitalization Account (TBRA), whose grants were to be used to investigate and clean up brownfields in the seven-county Twin Cities metropolitan area. The original objective of the TBRA was to encourage subsequent economic development, increase the tax base, create living-wage jobs, and promote compact and efficient development. Similar to DEED, the TBRA funds administered by the Metropolitan Council are awarded twice a year, with applications due on May 1st and November 1st.

The Minnesota legislature, working with the Minnesota Dry Cleaners Association, established the Dry Cleaner Environmental Response and Reimbursement Account (Dry Cleaner Fund). The law helps pay for the environmental investigation and clean up of dry-cleaning facilities. The Dry Cleaner Fund is financed through an annual registration paid by dry cleaners and a solvent fee collected by retailers of dry-cleaning chemicals.

The Minnesota legislature amended MERLA to require that the MPCA and the MDA commissioners consider the planned future use of the property when reviewing voluntary response action plans.

## Local Tools Added and a Progress Report (1996–2000)

### Taxpayer Act and Resources for Redevelopment

The Minnesota legislature enacted legislation in 1997 (Minn. Stat. Ch. 383A.80–383A.81 and 383B.80–383B81) that granted Hennepin County and Ramsey County the authority to establish a mortgage registry and deed tax for deposit into an Environmental Response Fund (ERF). The ERF was to be used for the assessment and cleanup of brownfields within the two counties. For Hennepin County, which began collecting the taxes soon after receiving authorization from the Minnesota legislature, brownfield projects that involved green space or affordable housing were given priority ranking. The grant application deadlines were the same as for DEED and the Metropolitan Council: May 1st and November 1st of each year. Ramsey County did not initially establish an ERF Program but would later, in 2002.

Using the aforementioned Ford Foundation/Kennedy School of Government $50,000 grant to the MPCA VIC Program, along with funding provided through the Legislative Commission on Minnesota Resources and contributions from other private and public organizations such as Hennepin County, the MEI established and administered the Redevelopment Grant Assistance Program, later called Resources for Redevelopment (R4R), which provided project management assistance and financial assistance to community groups, nonprofit organizations, and local units of government with a demonstrated need to conduct Phase I Environmental Site Assessments and environmental investigations. The funding used to conduct the environmental work was also stretched through in-kind contributions by the attorneys and environmental consultants involved in the project. The R4R program was ultimately phased out.

### The DEED Report, Contractor Protection, and More Awards

In January 1998, DEED prepared "A Report to the Minnesota Legislature on the Coordination of Cleanup and Redevelopment of Contaminated Properties in Minnesota," prepared in response to a request from the Minnesota legislature. The preparation of the report did not involve any outside independent evaluation; rather, the information and conclusions in the report involved DEED consultation with the MPCA, the Department of Commerce, the MDA, the Department of Revenue, and the Metropolitan Council. Other participants included representatives from the League of Minnesota Cities, the Association of Metropolitan Municipalities, and the Association of Minnesota Counties. The report stated "that, overall, the current brownfields programs administered by various state agencies are working well." However, it recommended "the creation of a Brownfield Coordinator position to help clients better understand available brownfields programs and guide them through the application process." The position was recommended to be housed in the MPCA. The report also recommended that the Minnesota legislature consider amending the LRA to provide liability assurances to remediation contractors. The report further stated, "Lack of criticism of current programs does not mean that there is no room for improvement. Current programs have undergone changes in the past to improve their mechanics and request additional funding. These requests and 'housekeeping' amendments will continue to occur as programs evolve." The report ended with a recommended state policy statement: "The State will give priority to cleaning up contaminated sites in order to protect human health and the environment and allow for appropriate redevelopment."

The Minnesota legislature amended MERLA to provide statutory liability protections to remediation contractors. The statutory language states that a contractor is not a responsible party for a release or threatened releases solely as a result of performing response actions (e.g., site preparation, engineering, construction, or similar actions) to address the release or threatened release if the contractor performs the response actions in accordance with a plan approved by the VIC Program.

The MPCA VIC Program and the Minnesota AG's Office received Renew America's Eighth Annual National Award for Environmental Sustainability, as well as a Capital and Environmental Award from Harvard University

## Federal Brownfields Legislation and Additional Local Efforts (2001–5)

### Federal Brownfields Act

In 2001, Congress passed a third amendment to CERCLA: The Small Business Liability Relief and Revitalization Act (Brownfields Act), which amended CERCLA by including provisions that limited liability for certain contiguous property owners and bona fide prospective purchasers, defined "appropriate care" and "all appropriate inquiries," formally sanctioned previous SMOAs between states and the EPA,

and clarified the CERCLA innocent landowner defense. In addition, the Brownfields Act expanded financial assistance in the form of assessment and cleanup grants and revolving-loan funds to promote the reuse and redevelopment of brownfields. In Minnesota, the provisions in the Brownfields Act have been welcomed and integrated into the various brownfield programs. A number of city, county, and state agencies in Minnesota have benefited financially by being awarded EPA brownfield assessments grants, brownfield cleanup grants and RLFs.

### Minnesota Targeted Brownfield Assessments and the Ramsey County ERF Program

With the approval of EPA Region 5, in 2002 the MPCA began to conduct assessments and investigations that have come to be known as Targeted Brownfield Assessments (TBAs). A TBA is conducted by a contractor hired by the MPCA at no cost to the applicant. The applicants for this program are generally local units of government that are not responsible parties.

Also in 2002, Ramsey County began to impose a mortgage registry and deed tax to establish an ERF Program similar to that in Hennepin County. The priority of the Ramsey County ERF Program was to provide gap financing for the development and redevelopment of blighted sites, including orphan sites, that will create additional jobs at living wages, affordable housing, and the cleanup of public land and green space to enhance the quality of life in neighborhoods.

## An Evolving Brownfield Landscape and Fiscal Challenges (2006–Present)

### Minnesota Brownfields

Minnesota Brownfields, a local nonprofit organization, was created in 2006. The organization is dedicated to promoting efforts that support and enhance the reuse and redevelopment of brownfields throughout Minnesota by conducting research, sponsoring education and public-policy forums and establishing partnerships.

### Uniform Environmental Covenants Act

The Minnesota legislature enacted the Uniform Environmental Covenants Act (UECA). Effective July 1, 2007, all new environmental covenants in Minnesota must conform to the UECA. The environmental covenant imposes activity and use limitations that are defined as "restrictions or obligations with respect to real property that are associated with an environmental response project." The MPCA, working with the AG's Office, created an environmental covenant template.

## Summary

Significant efforts have been made in Minnesota for more than two decades to address the issues related to contaminated properties, including brownfields. The legislation and the brownfield programs established by the legislature have been very successful, at times even pioneering. These efforts continue to provide important services to the brownfield redevelopment community and to evolve and respond to changing conditions.

Despite all these efforts and the progress, many brownfields in Minnesota still have not yet been addressed. In some respects, the remaining brownfields pose even greater challenges than those already addressed. Addressing this challenge, and facilitating the redevelopment of remaining urban brownfields, will be necessary in order to enable compact growth patterns in the future.

While past efforts have been laudable, important brownfields work is yet unfinished. It is important to support and strengthen existing brownfield programs and encourage new brownfield initiatives.

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